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March 20, 2017

Hearing Officer Tam Doduc
Hearing Officer Felicia Marcus
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Re: Rebuttal

Dear Co-Hearing Officers Doduc & Marcus,

DWR & Bureau of Reclamation's petition claims that moving the points of water diversion for their California WaterFix will cause no injuries to any legal users of water. Clifton Court, L.P.'s (CCLP) disputes this claim. According to now retired DWR Director Mark Cowin, "We are committed to meeting our obligation under standards that you imposed to protect beneficial uses of water and we have a proven track record of doing so." Furthermore, retired Director Cowin said, "models do not run water projects; experienced human operators run water projects." We are asked to trust DWR, USBR, & State Water Contractors' proven track record and human operators. Unfortunately, since Retired Director Cowin's speech, thousands of lives were placed in peril when Orville Dam nearly burst due to improper building and maintenance of its spillway. On March 15, 2016, the Sacramento Bee reported that damage was found at the Clifton Court Forebay (CCF) Intake. CCF is shut down for at least a month of repairs during the critical spring snow melt. Although our farm is the only private property adjacent to the intake, neither my tenants, nor I were informed of the potential threat to our property.

Seepage

"Some areas of the SCCF foundation are subject to significant underseepage..." (DWR-212 p. 164). We know this. However, there were no seepage issues before the Forebay was built. These pictures, taken in the middle of our Clifton Court property in the 1960's, show vibrant crops. (CCLP-31). Our aerial photo from the 1940's shows no seepage spots. (CCLP-12).

Despite our protests, the SWP engineers built the Clifton Court Forebay without cutoff walls. For nearly fifty years we have suffered from seepage problems along the mile plus banks of the Forebay that now border our farmland to the north. SWP's engineering mistake has cost our farm hundreds of thousands of dollars in lost crops and extra pumping costs.

At our year's end farm meeting in December 2016, I found our injuries from this past year's seepage totaled about 40 acres (7.6% of our farmable property). I called the new Acting Chief of DWR Delta Field Division, Amber Candela-Cooney (Diana Gillis retired in December 2016), and briefly explained we had a seepage problem. She promised she would look into it. In her letter of 2/14/17 (CCLP-32) Ms. Candela-Cooney states:

Specifically, DWR staff inspected our pump station that is near your property and identified as "seep 6" on the attached map. The inspection found that the seep pump, the seep well, and the standing groundwater within our seep basin is fully operational and operating efficiently. The seep basin is currently at the level it is supposed to be. Based on the Field Division staff investigation, it does not appear that DWR facilities are a source of seepage on your property.

Our property and the SWP property are separated by a cyclone security fence. Over a mile of our fields of crops border the Forebay. Ms. Candela-Cooney did not bother to meet me at the property, nor did she even ask where our seepage problems were located. She suggested I look at DWR's webpage on the Delta's groundwater systems and how they function. Our farm is bordered by about a half mile of the Delta Mendota Canal intake, a mile of levee on Old River, and over a mile of CCF embankments. Our only seepage problems are next to the Forebay. Needless to say, I wrote a letter back February 22, 2016 asking for more specific information. (CCLP-33). As of this filing, I have heard nothing.

So what does this have to do with the WaterFix? On Friday, August 19, 2016, Co-Hearing Officer Doduc (Hearing 8/19/16 p.193 l.4-8), asked that CCLP work with the Department (August 26th transcribed meeting with DWR) to resolve seepage issues. If these issues were not resolved I was to put them in my September 1, 2016 Case-in-Chief. The August 26th meeting ended with a lot of promises to look into things. Per Ms. Candela-Cooney's letter (CCLP-32) my concerns about seepage were dismissed, yet per WaterFix plans (DWR-212 p.164) there is significant underseepage. Ms. Candela-Cooney's letter show how the SWP are ignoring our seepage issues.

Solving Ongoing Injuries, Who Makes Us Whole?

Throughout the hearings I have asked for CCLP to be made whole. Although Mr. Bednarski talked about making diverters whole, Mr. Mizell clarified what this meant. "We're not talking about injury that's occurred in the past but injury that may occur through the course of the construction of the California WaterFix in the future." (Hearing 8/10/16 p.35). DWR claims a very good record of compliance in running the SWP and therefore implies that with this high level of credibility they should be trusted to run the CWF. Yet they won't talk about past damages, nor do they seem to have a plan for future damages once construction is completed.

I was told at the 8/26/16 meeting with DWR that the Water Contractors pay for maintenance and security at CCF. When I asked why they don't pay me for damages, I was told that was DWR's job. Mr. Berliner told Co-Hearing Chair Doduc, "the state has an entire process set up for anybody that feels that they've been damaged by the state. She can file what amounts to about

one page of paper –and ask for damages from the state.”(Hearing 8/19/16 p. 195). Here is the process we encountered:

We were first made aware of the claims process in 2012 by Sue Sims, (then) Executive Director of the California Water Commission. We explained our squirrel problem, documented by a letter from Contra Costa County Department of Ag, (CCLP-19-18). Isn't it amazing that after all our years of letters of complaint to SWP and CVP, Ms. Sims was the first person to tell us that there was a way to get compensation.

She had Mr. Al Davis (DWR real estate, who attended the meeting) send us a claim form. We filled out the claim in May 2012. In June 2012 we received a letter stating our claim had been denied, we would have to sue. The letter explained that the Victim Compensation and Government Claims Board would act on our claim at their August 18, 2012 meeting. Although we were told we did not have to attend the meeting, we wanted to know what to do next. Why did we have to sue? We attended the meeting and listened to hours of victims' small complaints about things like the CHP towing their car. It did not seem that we were in hearings that had anything to do with ongoing DWR injuries. When it was our turn, the Board said that any matter involving more than a few thousand dollars could only be settled with a lawsuit against the State.

A few weeks later we received our official denial as well as a copy of a letter sent to DWR Director Mark Cowin by Julie Nauman, Executive Officer Victims Compensation & Government Claims Board. “Secretary Caballero and I encourage your department to meet with CCLP to discuss a plan to both control the squirrel population and compensate CCLP for its losses.”(CCLP-20). We never heard from Mark Cowin who is now retired. Oddly enough, during our meeting with DWR on August 26, 2016, Mr. Davis (DWR real estate) promised “I will take a look at the response to the letter that was sent to Mark regarding – from the Victims Compensation Board.” (DWR meeting 8/26/16 p. 140). We have heard nothing.

The process for getting paid damages for injury from the SWP is this: I have ongoing damages, so I have to call, write letters, and establish proof of damage. Then, I can't just meet with the State Water Contractors who run the maintenance at CCF, show them my damages and receipts for money spent, and get reimbursed for my trouble. No, I have to file a claim. Then I need to hire a lawyer and sue the State. When my hearing comes up, I need to take more time to plead my case. At this point, I'm already out several thousand dollars and at least 50 hours of work. We suffer more injuries at least every year. If I was a criminal, I would be treated better than I am by the State of California. My only crime is living next to the SWP & CVP. The burden of proof lies solely on my shoulders. How can DWR have a very good record of compliance in running the SWP when they are such poor neighbors?

SCCF

According to Mr. Bednarski, a manager of the Water Supply Initiatives Section at the Metropolitan Water District of Southern California (MWD) and engineering team member for the CWF, “So we'll be expanding Clifton Court to the south so that they have the same

operational volume so that, when we're in the dual operational mode, they continue to bring water in from the old River intake inlet into Clifton Court and it will continue to operate as it is" (Bednarski testimony 8/5/16 p. 10 & 11). The planned South Clifton Court Forebay (SCCF) will be completely enlarged and rebuilt. However instead of designing new intake structures "When water is being diverted at the existing diversion facilities, flow will continue to be diverted off of West Canal through the existing intake control structure." (DWR-57 p. 22). Now that the intakes of the CCF are damaged and have caused the CCF to be closed for over a month's worth of repairs, do the engineers still plan to reuse the intakes? Can we really trust these engineers?

Levees

The CWF plans to take care of levees at the intakes. "Riprap will be placed on levee-side slope upstream and downstream of the structure to prevent erosion from anomalies in the river created by the structure." (DWR-57 p.25 l. 16). However, the levees around the intake at the new SCCF are not included in the engineering plan. Even though the SCCF will pump 10,000 and the CVP will continue to pump 5,000 cfs , there are no plans to shore up the levees. Even though the WaterFix will use the SCCF in dual operational mode, I asked Mr. Bednarski if he would redo my levee at Old River. He said, "So, as far as the California WaterFix is concerned, I do not believe we have any plans to make improvements to that levee." (Testimony 8/10/16 p. 20 l. 6). So the same engineering team that thought the intake at CCF was ok, also think our levees adjacent to the SWP & CVP intakes do not need ongoing fortification?

Our land and mile + of levees on Old River lie between the beginning of the two State gigantic water export systems. Neither SWP or CVP offered to rock our dirt sloped levees when they initially rocked their own levees. Nor did they offer to re-rock our levees in the late 1970's or the late 1990's when our levees were leaking. We've spent hundreds of thousands of dollars to keep our levees from being whittled away by the force of the water pumped south. Whether it is the SWP, or the CVP, or the WaterFix, it is wrong to make individual landowners pay for damage caused by shipping water south. In effect, Clifton Court, L.P. is being singled out to pay for the upkeep of levees which are used for the delivery of water to the rest of California. This is an unfair burden.

Water Rights

Mr. Bednarski said "In reference to my comment as far as making the current diverters whole, our goal is to at the end of the Project, ensure that they have the same quantity and quality of water that they have before our Project commenced and ... That's – That's our commitment to the diverters at this point in time." (Hearing 8/5/16 p. 35 l. 8-14) Mr. Bednarski's testimony did not include our licensed diversions at Clifton Court, L.P. Nor did his testimony discuss how we could mitigate our land. Co-Hearing Chair Doduc requested that Mr. Bednarski work with us (Hearing 8/10/16 p.31). We have not heard from Mr. Bednarski.

We have 635 acres in the legal Delta with over a mile of river front property. We have water rights from the 1870's. Our Victorian house was barged to the farm in 1892 -- proof of the prospering farm. Our Water Rights are pre 1914, Riparian, and licensed from the 1920's. If we cannot mitigate our farm and water rights for another farm with exactly the same or more

acreage and exactly the same or older water rights, we ask for special dispensation to retain all our Water Rights and the ability to sell them on the open "water" market in perpetuity.

Public Trust

As Co-Hearing Officer Doduc said, "a critical component of the petitioner's request in this matter is based on a matter of trust, trust in the future operation of the project should it be – or should the petition be granted by this Board." (Testimony 8/19/16 p.190-191). For the many reasons presented above, Clifton Court, L.P. trusts neither DWR nor USBR to be able to construct or operate the CWF without injuring us.

Sincerely,
Suzanne Womack
General Partner, Clifton Court, L.P.